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International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 125th meeting
Held at the Palais Wilson, Geneva, on Thursday, 5 February 2015, at 10 a.m.

Chairperson: Mr. Decaux

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The meeting was called to order at 10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Serbia (continued) (CED/C/SRB/1 and CED/C/SRB/Q/1)

1. *At the invitation of the Chairperson, the delegation of Serbia took places at the Committee table.*

2. **Ms. Pavlovic** (Serbia), in reply to questions asked at the preceding meeting (CED/C/SR.124), said that the Convention had been incorporated into national law, and there were thus no obstacles to its implementation. Article 10 of the Criminal Code provided that persons could not be prosecuted in Serbia if they had served a sentence for the same offence abroad, if the statute of limitations on the enforcement of the sentence had run out, if they had been pardoned or if they lacked legal capacity. Although enforced disappearance was not an offence in its own right under national law, a person could be prosecuted for the various offences involved in enforced disappearance. Moreover, if enforced disappearance was not an offence in the country where it had been committed, the Serbian courts could still try the suspect on the authorization of the Public Prosecutor or by directly applying relevant international instruments. There did not have to be an exact correspondence between the law of the country where the offence had been committed and Serbian law.

3. **Mr. Yakushiji**, referring back to the State party's replies to the list of issues, which had been circulated informally, said that he would like to know whether the risk that a person might be subjected to enforced disappearance was assessed in the course of expulsion, return and asylum procedures and, if so, how many extradition requests had been denied and how many asylum claims had been approved on those grounds. Under what conditions would diplomatic assurances be accepted when there was reason to believe that the person might be subjected to enforced disappearance? Were there plans to adopt a specific legal provision on non-refoulement that would apply in such cases? What countries were included in the list of "safe countries", what criteria were used to draw up that list and how often was the list reviewed? He wished to know whether, prior to proceeding with an expulsion, return, surrender or extradition to a State that was considered safe, a thorough assessment of the individual's degree of direct and indirect personal risk was conducted. He wished to know whether persons subject to expulsion, return or extradition had effective access to free legal counsel and interpreting services. He also wished to know whether expulsion and return orders could be appealed and, if so, before what authority and on what grounds. In addition, if such appeals were allowed, did they have an automatic suspensive effect?

4. Turning to the issue of arrest and detention registers, he asked whether the State party intended to take steps to ensure that prison registers met the requirements set forth in article 17, paragraph 3, of the Convention; whether the information they contained could be accessed by the Ombudsman (whose formal title was the Protector of Citizens), defence lawyers and judges; and whether there had been any complaints regarding a failure to maintain such registers properly. It would be useful to know when the bill on a national DNA registry would be enacted. He also wished to know how the right of notification of custody was safeguarded in practice, especially since such notifications were performed by the police rather than directly by the person taken into custody. He wondered whether any complaints had been filed for failure to notify the designated person promptly and, if so, what proceedings had ensued and what penalties had been imposed.

5. He requested further information about the work of the Ombudsman. Did that office have the authority to monitor the implementation of the Convention and had it received and

considered any complaints regarding the rights and obligations covered in the Convention? Did public officials receive specific training concerning the Convention?

6. **Mr. Corcuera Cabezut**, pointing out that the State party had not provided a full written reply to the questions contained in paragraph 22 of the list of issues, asked whether persons, including relatives, who had suffered harm as a direct result of an enforced disappearance were entitled to reparation and rehabilitation and, if so, whether such redress was provided by the Commission for Missing Persons or another body. He also asked whether the civil courts had ever granted reparation to victims of enforced disappearance and what the threshold conditions were for establishing pecuniary damages. In reference to paragraph 145 of the State party's report, he wished to know what steps had been taken to overcome the obstacles posed by the Law on the Rights of Civilian War Victims to the enjoyment by victims' families of their rights.

7. With reference to paragraph 95 of the report, he would like the delegation to comment on the progress made in investigating the circumstances surrounding the enforced disappearance of thousands of people during the conflict in the former Federal Republic of Yugoslavia, discovering the fate and whereabouts of the victims, and granting reparation. Despite the efforts of the working group on persons unaccounted for in connection with events in Kosovo, nearly 1,700 people were still listed as missing. What steps were the authorities taking to speed up the search? Had any investigations and legal proceedings been launched on the basis of the working group's findings? Did the working group's mandate include the provision of reparation to the victims' families?

8. He would like to know whether the State party intended to amend the Criminal Code to cover the offences relating to the wrongful removal of children specified in article 25 of the Convention. He would appreciate information about child victims of enforced disappearance and would like to know if those cases had been registered and what steps, including the establishment of mutual assistance mechanisms between countries, had been taken to locate and identify child victims of enforced disappearance and to provide support to those children and their families. The Committee would be interested in hearing about examples of cases where the provisions of the Family Act regarding the annulment of adoptions had been applied in cases where children had been wrongfully removed from their parents or whose parents were unknown.

9. **Ms. Janina**, noting that Serbian law did not appear to cover all victims, notably the victims of Serbian military operations outside the country, asked how the State party upheld victims' right to truth and reparation. She wished to know why the State party did not have a specific law on missing persons.

10. **Mr. Huhle**, recalling that the definition of the term "victim" under the Convention was not restricted to relatives, let alone close relatives, and noting that the State party intended to amend the Criminal Code to replace the term "damaged party" or "injured party" with the word "victim", asked whether the amendment would be sufficient to bring the definition of "victim" into line with the Convention.

The meeting was suspended at 10.40 a.m. and resumed at 11.35 a.m.

11. **Ms. Pavlovic** (Serbia) said that, pursuant to the Constitution of Serbia and other national laws, persons could not be expelled or returned against their will to countries where their life or freedom was in danger due to their race, language, religious affiliation, ethnicity or other grounds. Decisions on expulsion were taken by a court of law, and those decisions could be appealed to a higher court. The decisions of the higher court could in turn be appealed to the Ministry of Justice, whose decision was final. In cases where a court found that the required conditions for expulsion had been met, that decision must be confirmed by the Ministry of Justice; if, on the other hand, the court found that the conditions had not been met, the Ministry of Justice could not alter that decision. Each case

was examined individually, and any circumstances that might put a person at risk of enforced disappearance were taken into consideration. All persons who could not afford to hire legal counsel were entitled to free legal aid. Persons subject to expulsion proceedings were also entitled to interpretation services and to contact with their family members or their country's diplomatic representatives in Serbia.

12. Serbia was a member of international police organizations such as Interpol and EUROPOL and actively cooperated with various diplomatic missions. Information about whether the rights of persons expelled to another country were being violated could be obtained from those sources.

13. **Mr. Pantic** (Serbia) said that a list of what were considered to be safe countries had been drawn up. That list included 54 safe countries of origin and 42 safe third countries. In order to be included on that list, States must adhere to principles such as respect for human rights and the prohibition of torture. The list had last been reviewed in 2009, and there were currently no plans to update it.

14. **Ms. Pavlovic** (Serbia) said that the conditions that must be met in order for a defendant or convict to be extradited or surrendered to a foreign State were defined in the Law on International Legal Assistance in Criminal Matters.

15. **Mr. Odalovic** (Serbia) said that his delegation would provide the Committee with a written copy of that law. The Office of the Ombudsman was a relatively new institution that was tasked with protecting the rights of Serbian citizens, including the right not to be subjected to enforced disappearance. The Ombudsman had the authority to visit all places of detention and to communicate freely with persons deprived of their liberty.

16. **Ms. Mirovic** (Serbia) said that places of detention kept both electronic and paper registers of detainees and prisoners; a personal file on each person was maintained that included all the decisions handed down in each person's case. The main register included information such as the person's name, date of birth, mother's and father's names, citizenship and identification number. The requirement to keep such registers was established by law. The work of the Directorate for the Enforcement of Criminal Sanctions of the Ministry of Justice was monitored by NGOs, and in most cases its performance had been deemed satisfactory.

17. **Ms. Vazic** (Serbia) said that all State authorities were required to cooperate with the Office of the Ombudsman and to provide it with access to all relevant information about persons deprived of their liberty. The Office of the Ombudsman had the power to initiate disciplinary proceedings against any official who refused to cooperate with it and to request the official's dismissal. Under Serbian law, the Ombudsman must have unhindered access to all correctional institutions and had the right to hold private meetings with persons deprived of their liberty. All State authorities, including prison authorities, were required to comply with requests from the court for evidence or information, even when the request concerned persons whose deprivation of liberty had not been ordered by the court, such as persons in police custody.

18. **Mr. Dilparic** (Serbia) said that all persons in custody were held in places of detention run by the Directorate for the Enforcement of Criminal Sanctions. The police must immediately bring arrested persons before a prosecutor, who had 48 hours to decide whether they should be brought before a judge or released. Once the prosecutor had issued an order to open criminal proceedings, a court or panel of judges decided whether the individual should remain in custody. Detainees or their legal counsel could appeal such decisions, although in practice that rarely occurred. The parents of detainees or other members of their family could hire legal counsel to represent them. Decisions on appeals that challenged the lawfulness of a detention or custody order were issued by a panel of three judges that did not include the judge who had issued the decision at first instance, and

such decisions were reviewed every 30 days. Places of detention were responsible only for overseeing the application of criminal sanctions, while persons deprived of their liberty remained under the jurisdiction of the court and were entitled to communicate in writing with the court, receive family visits three times per month and receive meals from home. He was not aware of any complaints about the records kept by the Directorate. Upon arrival at a police station, arrested persons were immediately asked whom they wished to be notified of their arrest.

19. **Mr. Yakushiji** asked the delegation to provide information in writing on the procedures that Mr. Dilparic had just described.

20. **Mr. Dilparic** (Serbia) said that foreigners who were taken into custody could request that the diplomatic representative of their country in Serbia should be informed of their deprivation of liberty.

21. **Mr. Pantic** (Serbia) said that the bill on the DNA registry was in its final drafting phase and would most likely be adopted ahead of schedule, perhaps even before the end of 2015. The adoption of the bill was a priority, and the most highly qualified experts were involved in its preparation. In November 2014, a working group had been established to prepare a handbook to provide guidelines for police conduct in cases of abduction.

22. **Ms. Mirovic** (Serbia) said that training concerning international human rights treaties was provided to judges and prosecutors at the Judicial Academy, while police officers received separate training at the Police Academy. As the Convention was relatively new, there was scope for further training regarding its specific provisions, and she was confident that the relevant training centres would include such modules in their curricula.

23. **Mr. Odalovic** (Serbia) said that the adoption of a law on missing persons was of the utmost priority and that for the past several years Serbia had been making a determined effort to provide full legal coverage for all cases of persons who had gone missing during the conflict in the former Yugoslavia. Serbia was working with other countries of the region to seek a joint solution to that difficult problem. The task was complicated by conflicts of jurisdiction among the various States that had made up the former Yugoslavia. About 30 million euros were allocated annually to provide pensions and other financial support to 448 family members of missing persons. The Commission for Missing Persons also worked to uphold their rights, and there was a special programme for families of missing persons that were in particularly vulnerable positions. Psychological support had been provided to some 780 families of missing persons at workshops held in cooperation with the International Committee of the Red Cross. Thus, a great deal was being done to protect the families' rights even in the absence of a comprehensive law on the subject.

24. The Government ensured that searches for missing and disappeared persons continued until the whereabouts of those persons was discovered. The registered number of missing persons had fallen, and the number of missing children was under 200. Cooperation and information exchange among all authorities of the countries that had once made up the former Yugoslavia and international organizations were essential in order for the search for missing persons to be effective. Joint efforts were crucial in order to locate mass graves and identify the persons responsible for enforced disappearances that occurred during the former conflict.

25. **Ms. Vazic** (Serbia) said that, while no specific mechanism had been established for providing reparation to the families of missing persons and victims of enforced disappearance, victims were entitled to use various judicial procedures to claim compensation. Furthermore, if victims' families could prove that the State had failed to carry out an investigation into their case, they could also apply for reparation. The burden of proof in such circumstances, however, lay with the families. Those procedures would

remain in effect until new legislation was introduced that would make administrative procedures for reparation applications available to victims.

26. **Ms. Pavlovic** (Serbia) said that proposed amendments to the Criminal Code would define and classify enforced disappearance as a criminal offence in its own right. The classifications of other related offences would also be amended. Adoption was governed by the Family Law. While only a court could declare an adoption null and void, child protection authorities were empowered to request the initiation of the cancellation procedure. However, no such requests had been submitted to date.

27. **Mr. Rabrenovic** (Serbia) said that the State party had made all its archives available to the International Criminal Tribunal for the Former Yugoslavia in order to facilitate the Chief Prosecutor's investigations and assist in shedding light on the identities of persons who had committed and covered up acts of genocide. The State party's cooperation with the Tribunal had been officially recognized by several bodies, including the Tribunal itself. The extensive work of the Office of the War Crimes Prosecutor, which had access to all military and police records in Serbia, had also been acknowledged. The Tribunal had the most comprehensive records because some documents had been submitted directly to it rather than to the State archives.

28. **Mr. Dilparic** (Serbia) said that the opening of a mass grave automatically triggered an investigation, and a judgement of first instance was pronounced at that time. Investigations were currently being conducted into cases where attempts had apparently been made to conceal mass killings by relocating people's remains. Such investigations were particularly challenging because there was no written documentation on the location of those types of graves.

29. **Ms. Mirovic** (Serbia) said that the definition of the term "victim" in Serbian law would be amended in the course of the State party's European Union accession negotiations and aligned with the Convention, which set out a broader definition. The alignment of national legislation was to be completed before the end of 2015.

30. **Mr. Corcuera Cabezut** asked whether the State party might consider amending national legislation in order to make comprehensive victim protection services, including legal and social entitlements such as inheritance rights, available without requiring the issuance of a death certificate for a missing person. The State party might draw on examples of updated legislation in Latin America. Would the Government also consider providing for other forms of non-financial reparation? Did the 2004 Supreme Court decision requiring claims against the State to be brought within five years of the commission of the wrongful act apply to gross human rights violations and cases of enforced disappearance? Bearing in mind the continuous nature of the crime of enforced disappearance, the question arose as to whether or not that decision might prevent victims from obtaining reparation.

31. **Mr. Yakushiji** said that he would like to express his sincere thanks to the delegation for its detailed presentation, which had provided the Committee with a deeper understanding of how the Convention was being applied in the State party. The Committee had also been made aware of the challenges faced by the State party with regard to the search for persons who had gone missing or disappeared during the conflict in the former Yugoslavia. He looked forward to continued interaction between the State party and the Committee with a view to improving the application of the Convention in the State party.

32. **Mr. Corcuera Cabezut** thanked the delegation for its engagement and for providing such useful information. The Committee was grateful for the delegation's explanations of the complex and sensitive issues of international law posed by the repercussions of the conflict in the former Yugoslavia. It would discuss those matters further and seek advice from the United Nations Legal Counsel when preparing its concluding observations.

33. **Mr. Odalovic** (Serbia) said that there was no disagreement among the various countries in the territory of the former Yugoslavia regarding the approach to be taken to cases of persons who had gone missing or had disappeared during the conflict. Each country was developing its own legislation in that respect, but national laws were not yet being invoked in foreign courts. Meetings were being held, notably between Serbia and Kosovo, in order to align different bodies of law with a view to increasing the efficiency of investigations and humanitarian responses. The extremely challenging nature of those problems in no way weakened the State party's resolve to seek solutions, however. He thanked the rapporteurs for their efforts and the Committee for the constructive dialogue, which had enhanced the understanding of both parties and would help the State party to achieve its goals in terms of the application of the Convention.

34. **The Chairperson** thanked the Serbian delegation for its open-minded cooperation and thorough replies.

The meeting rose at 1 p.m.